IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6368 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISHBHAI S PATEL

Versus

CHIEF REVENUE CONTROLLING AUTHORITY

Appearance:

1. Special Civil Application No. 6368 of 1990

MR MN MEHTA for Petitioner No. 1

MR BHATE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 08/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the order passed by the revisional authority dated 12.3.1990 in Revision Application NO.88 of 1988 in dismissing the same and confirming the order passed by the Collector of Stamps, Ahmedabad dated 4.10.1988 in Case NO.2 of 1987 by which the petitioner was directed to pay the amount of Rs.3100/- towards deficit stamp duty and Rs.2000/- by way of penalty, in all, Rs.5100/- with regard to the document in question.

#. The petitioner has taken a loan from one Visnagar Nagrik Sahakari Bank Limited of Rs.1,80,000/-. The documents of title were deposited by the petitioner with the bank which was on Rs.100/- stamp paper on 7.10.1981. The said document was presented before the Sub-Registrar, Visnagar being Registration No.26688. The Sub-Registrar, Visnagar withheld the said document exercising the powers under Section 33 of the Bombay Stamps Act and referred the document to the respondent No.2 - Collector of Stamps, Ahmedabad and the Collector of Stamps was of the opinion that the document is a deed of mortgage and the petitioner was required to affix the stamp duty of Rs.7100/-. After considering the said document and giving opportunity to the petitioner, respondent No.2 by order dated 29.9.1988 passed the order directing the petitioner to pay the amount of Rs.7100/- towards deficit stamp duty and Rs.2000/- towards the penalty, in all, Rs.9100/-.

#. Being aggrieved by and dissatisfied with the said order, the petitioner preferred the revision application before the State Government. Apart from the fact that the document in question can be considered to be mortgage deed or not and/or whether it can be said to be only a document with regard to deposit of title only. Another ground which was canvassed on behalf of the petitioner is with regard to exercise of the powers by respondent No.2 after unreasonable period, i.e. after a period of 7 years. The revisional authority, without considering the said argument of delay, dismissed the revision application confirming the order passed by respondent No.2. Being aggrieved by and dissatisfied with the same, the petitioner had preferred the present special civil application under Article 226/227 of the Constitution of India.

#. Mr.Mehta, learned advocate appearing on behalf of the petitioner, has relied upon the judgment of the Full Bench of this Court in the case of Gorwa Vibhag Cooperative Housing Society Vs. State of Gujarat, reported in 1992(1) GLR 654, unreported judgment of the

learned Single Judge of this Court in the case of Ambuja Metal Industries Private Limited Vs. State of Gujarat rendered in Special Civil Application No.6554 of 2000 with Special Civil Application No.2794 of 2001, unreported judgment of the learned Single Judge of this Court in the case of Kumarpal rendered in Special Civil Application No.4434 of 2003 and another unreported judgment of the learned Single Judge of this Court in Special Civil Application No.1258 of 2003 in support of his submission that respondent No.2 should not have exercised the powers after a period of 7 years of presenting the document and that exercise of the powers by respondent No.2 after unreasonable period itself was illegal and the order on the basis of that is nullity.

#. No affidavit-in-reply is filed on behalf of the respondents, i.e. no explanation whatsoever is given by the respondent authority justifying the delay in exercise of the powers after a period of 7 years. Mr.Bhate, learned AGP is not able to explain the delay in exercise of the powers.

#. Considering the judgement of the Full Bench in the case of Gorwa Vibhag Cooperative Housing Society (supra) and even subsequent to the Full Bench's judgment in the case of Shamjibhai Jadavji Variya Vs. Sub-Registrar, Vadodara, reported in 1996(3) GLR 783, in absence of any justification for delay in exercise of the powers, respondent No.2 could not have exercised the powers and initiated the proceedings almost after a period of 7 years. This Court in Special Civil Application Nos.654 of 2000, 12581 of 2003 and 4434 of 2003 has been pleased to quash and set aside the orders passed by the authority under the Bombay Stamps Act when the powers are exercised after a period of almost 3 to 4 years.

#. Considering the aforesaid three judgments as well as the judgment of the Full Bench of this court in the case of Gorwa Vibhag Cooperative Housing Society (supra), the impugned order passed by respondent no.2 dated 4.10.1998 cannot sustain and is required to be quashed and set aside. Accordingly, the order passed by the Collector of Stamps, Ahmedabad dated 4.10.1998 in Case No.2 of 1997 is required to be quashed and set aside. Consequently, the order passed by the revisional authority, State Government dated 12.3.1990 in Revision Application No.88 of 1998 in confirming the aforesaid order is required to be quashed and set aside and accordingly, it is quashed and set aside.

Rule is made absolute with no order as to costs.

(M.R.Shah,J)

(pathan)